

2:19-cv-01697-JAD-DJA - October 29, 2019

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEVADA

3 COMMODITY FUTURES TRADING)
COMMISSION,)

4 Plaintiff,)

5 vs.)

6 DAVID GILBERT SAFFRON a/k/a)
7 DAVID GILBERT and CIRCLE)
8 SOCIETY, CORP.,)

9 Defendants.)

Case No. 2:19-cv-01697-JAD-DJA

Las Vegas, Nevada

October 29, 2019

4:05 p.m. - 4:26 p.m.

Courtroom 6D

MOTION HEARING

CERTIFIED COPY

10
11 REPORTER'S TRANSCRIPT OF PROCEEDINGS
12 BEFORE THE HONORABLE JENNIFER A. DORSEY
13 UNITED STATES DISTRICT COURT JUDGE

14 APPEARANCES:

15 For the Plaintiff:

16 ***DANIELLE E. KARST, ESQ.***

17 *COMMODITY FUTURES TRADING COMMISSION*

18 *Three Lafayette Centre, 1155 21st Street, N.W.*

Washington, D.C. 20581

(202) 418-6158

19
20 (Appearances continued on page 2.)

21
22 Court Reporter: Amber M. McClane, RPR, CCR #914
23 United States District Court
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Las Vegas, Nevada 89101
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25 Proceedings reported by machine shorthand. Transcript
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2:19-cv-01697-JAD-DJA - October 29, 2019

1 APPEARANCES CONTINUED:

2 For the Defendant, Circle Society, Corp.:

3 **MICHAEL C. VAN, ESQ.**

4 **GARRETT R. CHASE, ESQ.**

5 SHUMWAY VAN

6 8985 South Eastern Avenue, Suite 100

7 Las Vegas, Nevada 89123

8 (702) 478-7770

9 Also Present:

10 GEORGE MALAS, CFTC Investigator

11 * * * * *

2:19-cv-01697-JAD-DJA - October 29, 2019

1 LAS VEGAS, NEVADA; TUESDAY, OCTOBER 29, 2019; 4:05 P.M.

2 --oOo--

3 P R O C E E D I N G S

4 **COURTROOM ADMINISTRATOR:** Now's the time set for a
5 motion hearing in Case Number 2:19-cv-1697-JAD-DJA, Commodity
6 Futures Trading Commission versus David Gilbert Saffron, et
7 al.

8 Counsel, please state your appearances.

9 **MS. KARST:** Good afternoon, Your Honor. My name's
10 Danielle Karst. I'm here for plaintiff, Commodity Futures
11 Trading Commission, and with me is Commodity Futures Trading
12 Commission Futures Trading Investigator George Malas who is
13 here in the courtroom today.

14 **THE COURT:** All right. Where is he? There he is.
15 Okay. Hi. Thank you.

16 Okay.

17 **MR. VAN:** Your Honor? I'm in a precarious situation.

18 **THE COURT:** What's going on, Mr. Van?

19 **MR. VAN:** I was contacted yesterday about
20 representing the Circle Society.

21 **THE COURT:** Right.

22 **MR. VAN:** And have not made an appearance, have not
23 signed a retainer agreement. I spoke with them. I spoke with
24 Ms. Karst about is there a possible way that we could continue
25 the freeze, continue out the current status of the case to

2:19-cv-01697-JAD-DJA - October 29, 2019

1 allow them, one, to serve Mr. Saffron, allow me to figure out
2 what's going on? I have no opposition to the status quo, none
3 whatsoever because it's -- I just -- I would like to kind of
4 get my feet underneath me before I could step in and make an
5 even moderately intelligent argument.

6 **MS. KARST:** Your Honor, we're here today. I'm
7 prepared to move forward on the preliminary injunction as to
8 Circle Society. To date, no one has entered their appearance
9 on behalf of Circle Society or Mr. Saffron, and unless someone
10 is entering their appearance today, the motion is unopposed
11 and ripe for adjudication.

12 I flew from Washington, D.C.. I brought -- I have
13 two witnesses with me today in the courtroom. So if Mr. Van
14 is planning to enter his appearance on behalf of Circle
15 Society, you know, I -- CFTC would be amenable to a
16 continuation if we can also continue the current asset freeze
17 which expires in a couple of hours, and I would also request
18 that Circle Society produce business records pursuant to this
19 Court's order. And finally, Your Honor, I would request
20 documentation as to the source of any retainer that Mr. Van
21 may possess. The CFTC is very concerned that fees used to
22 retain Mr. Van's services may have been transferred in
23 violation of this Court's orders, and our position is that
24 acceptance of funds from or assets from third parties who are
25 acting as pass-throughs or straw men on behalf of the

2:19-cv-01697-JAD-DJA - October 29, 2019

1 defendants would violate the temporary restraining order.

2 **THE COURT:** Okay. So, Mr. Van, I'm sure you've
3 gotten some information about what's been going on, the nature
4 of this --

5 **MR. VAN:** (Indicating.)

6 **THE COURT:** -- case.

7 So I guess the question is are you here to put an
8 appearance -- an appearance on behalf of Circle Society, or
9 will Circle Society not be represented here today? I think
10 those are the two different roads we can go right now. And
11 only you know the answer because you've spoken to a client.

12 **MR. VAN:** Correct. If the Court is going to -- if
13 we're going to continue this to allow me -- what I don't want
14 to say is yes, I want to make an appearance. Okay, by the
15 way, you're in contempt because you haven't supplied
16 documents. Then, no, I don't want to make the appearance.

17 I literally had a phone call yesterday not with
18 Mr. Saffron, with a third party, who is a 20-year friend of
19 mine that said, Hey, will you represent this entity?

20 I spoke with Ms. Karst. I then called them back and
21 said, Look, I need a retainer, and it better not be from any
22 of those funds. I don't want it. You're going to have to
23 source them out some way so that it's not from -- based upon
24 her warning.

25 So based upon that, if I can get the time, yes, we'll

2:19-cv-01697-JAD-DJA - October 29, 2019

1 make the appearance. I just need some -- I don't even know --
2 I trust her. I don't know that Circle Society's ever been
3 served. I don't know anything. I -- the source of my
4 knowledge of this case is a phone call and my notes, my
5 cryptic notes --

6 **THE COURT:** It's my understanding that they have been
7 served because their resident agent, P. Sterling Kerr, had
8 consented to accept service electronically; is that correct?

9 **MS. KARST:** Yes, Your Honor, that's correct. And
10 that was documented in the affidavit of service, and the
11 registered agent has been served with the -- all filings in
12 this case, including the two orders and to -- notice of
13 today's hearing.

14 **MR. VAN:** Did not know that Sterling Kerr was the
15 resident agent. We'll contact him. We'll get the records.
16 We'll comply with the court orders. Just -- I haven't had a
17 chance to get my legs underneath me at all.

18 **THE COURT:** All right. So have a seat, both of you,
19 for just a second. I'm going to kind of walk this back a
20 little bit and see if we can get to a resolution that you
21 could make an appearance and we can perhaps keep this --
22 extend the TRO.

23 So let's first talk about the government has
24 represented in the affidavit of service and the service papers
25 that are in the record that Circle Society was served. So

2:19-cv-01697-JAD-DJA - October 29, 2019

1 we're not concerned about that.

2 But with respect to Mr. Saffron, I have a motion for
3 alternative service of process on Mr. Saffron and the
4 memorandum in support. That's at Document Number 16. Let me
5 talk about that first, and let's see if we can get that part
6 under us and keep moving forward.

7 So I've reviewed the motion and the proposed order.
8 The proposed order I think is missing just one aspect of the
9 rule. So the rule -- (c), need to provide the proposed
10 language of the summons to be used in the publication briefly
11 summarizing the claims asserted and the relief sought and
12 including any special statutory requirements.

13 So, Ms. Karst, if you could tell me what you
14 anticipate that would look like in the proposed order so that
15 I can decide if that would be sufficient?

16 Do you need that language back one more time?

17 **MS. KARST:** Yes, Your Honor. My apologies. I don't
18 have the statute in front of me.

19 **THE COURT:** So it's -- I'll read it one more time.
20 Provide the proposed language of the summons to be used in the
21 publication briefly summarizing the claims asserted and the
22 relief sought and including any special statutory
23 requirements.

24 **MS. KARST:** Thank you, Your Honor.

25 I'm happy to submit another proposed order that

2:19-cv-01697-JAD-DJA - October 29, 2019

1 addresses all of those requirements if the Court would like,
2 and we'll include the four counts with the citations as set
3 forth in the complaint.

4 **THE COURT:** Okay. If I grant that motion for
5 publication, I'm assuming the government's going to request
6 that I extend the TRO as to Saffron through the publication
7 period, which would be four weeks; is that right?

8 **MS. KARST:** Yes, Your Honor.

9 **THE COURT:** All right. What would be your argument
10 in support of extending that?

11 **MS. KARST:** We need to continue the asset freeze for
12 the reasons that was initially set forth in the motion. I'm
13 trying to -- you know, our position is this is a relatively
14 simple fraud case. However, unless the defendants are
15 restrained and enjoined, you know, we have a real concern that
16 any assets remaining will be dissipated or concealed or moved,
17 and it's an ongoing concern. I think that the asset freeze
18 needs to be continued in order to provide the Commission with
19 time to formally serve Mr. Saffron.

20 And to make the record clear, we believe that
21 Mr. Saffron is clearly aware of the lawsuit, and, you know, I
22 was actually contacted by an attorney who was claiming to
23 represent Mr. Saffron and who claimed to be entering an
24 appearance on Mr. Saffron's behalf. His name is Marcus
25 Mumford, and I submitted some of that documentation. I

2:19-cv-01697-JAD-DJA - October 29, 2019

1 requested follow-ups from Mr. Mumford; never received anything
2 back.

3 So I would ask that the TRO be continued until the
4 Commission has an opportunity to formally serve Mr. Saffron,
5 and that would be at least an additional month pursuant to the
6 statute, which requires four weeks of publication.

7 **THE COURT:** How promptly would you be able to get
8 this published?

9 **MS. KARST:** I would try as soon as possible,
10 Your Honor. We've already reached out to the two papers that
11 are identified in my motion, and I would try to get that, you
12 know, published this week, if possible, or as soon as the
13 publication is able to do it.

14 **THE COURT:** Are you aware at all yet how long the
15 turnaround for that would be? If I'm extending this, I need
16 to understand how long beyond the four weeks.

17 Any reason to believe it would take up more than a
18 week?

19 **MS. KARST:** No.

20 **THE COURT:** All right. I am going to grant the
21 motion for alternative service of process by publication at
22 Document Number 16. I find that the movant has satisfied all
23 of the requirements and provided me with enough assurances as
24 to (c).

25 Here's what I'm going to ask you to do. So I'm --

2:19-cv-01697-JAD-DJA - October 29, 2019

1 the proposed order granting the motion that was submitted with
2 the motion is sufficient if you can add for me the language
3 required by (c). Please get that to me by -- can you get that
4 to me by noon tomorrow so I can turn that around --

5 **MS. KARST:** Yes, Your Honor.

6 **THE COURT:** -- the proposed order?

7 **MS. KARST:** Yes.

8 **THE COURT:** So if you can just submit a revised
9 proposed order that way I can sign that, we can get that
10 entered, and you can go ahead and begin publication.

11 All right. So now that I have granted that and it
12 will be a little over four weeks that we will need to extend
13 the TRO by, Mr. Van -- so, Ms. Karst, if Mr. Van enters his
14 appearance on behalf of Circle Society today and agrees on
15 behalf of Circle Society to extend the TRO until the same
16 length of time that we need to extend it for Mr. Saffron, will
17 the government agree to go that route instead of attempting to
18 put on evidence to extend or to convert the TRO as to Circle
19 Society into a preliminary injunction?

20 **MS. KARST:** Yes, Your Honor. The CFTC agrees to an
21 extension to allow Mr. Van to get up to speed. I will repeat
22 my request for production of documents and for documentation
23 regarding source of any retainer.

24 **THE COURT:** Right. So in order to -- today's the
25 29th. In order to facilitate enough time to publish the

2:19-cv-01697-JAD-DJA - October 29, 2019

1 service in this case, I -- Danielle, could we put this on
2 December 2nd at 3:30?

3 **COURTROOM ADMINISTRATOR:** Yes, Your Honor.

4 **THE COURT:** So Monday, December 2nd. I have a trial
5 that is going to be going for several weeks, but my Mondays
6 are the days that I have saved for other matters.

7 So Monday, December 2nd, at 3:30 p.m., does that work
8 for the CFTC?

9 **MS. KARST:** Your Honor, if I could just have a moment
10 to confer with -- I actually have a victim witness who
11 traveled from Los Angeles to appear today, and if I could just
12 have a moment to confer with that witness and Mr. Malas?

13 **THE COURT:** You may.

14 **MS. KARST:** Thank you.

15 *(Conferring.)*

16 **MS. KARST:** Thank you, Your Honor. December 2nd,
17 Monday, at 3:30 works for the CFTC.

18 **THE COURT:** Mr. Van, does that work for you and
19 Circle Society?

20 **MR. VAN:** Works for us, yes.

21 **THE COURT:** All right. So are you entering your
22 appearance on behalf of Circle Society today?

23 **MR. VAN:** I am.

24 And just to publicly humiliate Mr. Chase, he is from
25 my office as well, Garrett Chase, he'll be counsel with me.

2:19-cv-01697-JAD-DJA - October 29, 2019

1 He is just running late, so I just wanted to take a potshot at
2 him.

3 **THE COURT:** Okay. All right. Welcome, Mr. Chase.

4 All right. So I will end -- so now that you have
5 entered your appearance, Mr. Van, do you stipulate to extend
6 the TRO to December 2nd? So we would extend it to 6:00 p.m.
7 on December 2nd to facilitate your ability to get up to speed
8 on this case and produce the documents and comply with the TRO
9 as it's issued.

10 **MR. VAN:** Yes -- having not seen the TRO, yes, Your
11 Honor. I'll do everything I can. If we can include in the
12 order just that Mr. Kerr will be required to provide copies of
13 whatever documents he received?

14 **THE COURT:** Well, so, the TRO requires Circle Society
15 to do a number of things. So if he is a representative of
16 Circle Society, then he's going to be the person who has to do
17 that, so --

18 **MR. VAN:** Let me back up. He's the resident agent
19 that received all the documents.

20 **THE COURT:** Right. I don't have jurisdiction over
21 him, though, to be able to order him to do something. He
22 hasn't --

23 **MR. VAN:** No, that's the resident --

24 **THE COURT:** -- appeared --

25 **MR. VAN:** As the resident agent of the entity, I

2:19-cv-01697-JAD-DJA - October 29, 2019

1 think you do. Just -- just order that those documents be
2 turned over. Maybe I'm wrong.

3 **THE COURT:** So Circle Society has obligations under
4 the TRO. I'm not going to specifically extend them to
5 Mr. Kerr at this point.

6 **MR. VAN:** Okay.

7 **THE COURT:** But the TRO I think is clear on its
8 obligations. And so you know, the TRO is entered at Document
9 Number 9.

10 **MR. VAN:** Okay.

11 **THE COURT:** So you can access the docket, and you can
12 understand the extent of the obligations.

13 So let me ask Ms. Karst, is it the TRO itself that
14 requires -- it just -- it's more of a prohibition.

15 **MS. KARST:** Yes, Your Honor. In ECF Number 9,
16 page 16, paragraph 4 is the language.

17 **THE COURT:** So I will read the language to you. So
18 Circle Society and its officers, agents, servants, employees,
19 and attorneys who receive actual notice of this order by
20 personal service or otherwise are temporarily restrained from
21 refusing to permit authorized representatives of the
22 Commission to inspect, when and as requested, any documents
23 related to defendant's business activities or personal
24 finances.

25 So my understanding is that Ms. Karst is now making

2:19-cv-01697-JAD-DJA - October 29, 2019

1 that request to be able to inspect your client's documents,
2 and obviously she will communicate now more directly with you
3 since you have made an appearance. And I anticipate she'll
4 probably send a letter from the Commission with more specific
5 requests.

6 **MS. KARST:** Yes, Your Honor, that's correct. I'll do
7 that.

8 And I would like to note for the record that Mr. Van
9 does, in fact, have both orders issued by this Court. I
10 e-mailed them to him on October 4th, the first order to put
11 him on notice, as well as October 16th, because Mr. Van was or
12 is representing an associated non-party entity. And so that's
13 why I sent him notice of the order. So he does, in fact, have
14 copies of them.

15 **THE COURT:** All right. Well, I anticipate that there
16 will be more communications between the sides in the days
17 leading up to our December 2nd continued hearing.

18 In the meantime, I will order that the hearing on the
19 Commission's motion for a preliminary injunction, which is ECF
20 Number 6, is continued to 3:30 p.m. on December -- of December
21 2nd. The time for the temporary restraining order to expire
22 is extended to December 2nd at 6:00 p.m. And I'm also going
23 to direct that -- well, I think that I've already directed
24 that all of the written documents that we filed be served on
25 Mr. Saffron.

2:19-cv-01697-JAD-DJA - October 29, 2019

1 So I will wait then -- await your revised draft order
2 of publication, and if you could please submit that by noon
3 tomorrow.

4 **MS. KARST:** Yes, Your Honor.

5 **MR. VAN:** All right. Thank you, Your Honor.

6 **THE COURT:** Anything else, Ms. Karst?

7 **MS. KARST:** Nothing, Your Honor.

8 **THE COURT:** All right. Then we'll see everyone on
9 December 2nd.

10 **MR. VAN:** All right. Thank you, Your Honor.

11 **MS. KARST:** Thanks very much for the Court's time.

12 **THE COURT:** Thank you.

13 **COURTROOM ADMINISTRATOR:** All rise.

14 *(Proceedings adjourned at 4:26 p.m.)*

15 --o0o--

16 COURT REPORTER'S CERTIFICATE

17 I, AMBER M. McCLANE, Official Court Reporter, United
18 States District Court, District of Nevada, Las Vegas, Nevada,
19 do hereby certify that pursuant to 28 U.S.C. § 753 the
20 foregoing is a true, complete, and correct transcript of the
21 proceedings had in connection with the above-entitled matter.

22
23 DATED: 11/12/2019

24
25 /s/


AMBER McCLANE, RPR, CCR #914

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